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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHRIS NOVAK, AN INDIVIDUAL,

Plaintiff,

vs.

NANOLOGIX, INC., an Ohio

Corporation

AND DOES 1-100, INCLUSIVE;

Defendants.

Case No. 5:13-cv-01971-PSG

**PLAINTIFF'S COMPLAINT FOR:
1. BREACH OF CONTRACT**

DEMAND FOR JURY TRIAL

COMPLAINT

NOW COMES Plaintiff, Chris Novak ("Novak" or Plaintiff), through its attorney, and for its Complaint against Defendant, NANOLOGIX, INC., ("NANOLOGIX, INC." or Defendant), and DOES 1 through 100, inclusive alleges as follows:

THE PARTIES

1. Plaintiff, Chris Novak, is an individual who resides and works in California, Santa Clara County.

2. Upon information and belief, Defendant, NANOLOGIX, INC., is a corporation organized under the laws of the State of Ohio.

1 failing to pay for services rendered by Plaintiff both in cash and in stock that was to be
2 issued to Plaintiff.

3 8. Defendant purposefully directed its action into this district by entering into
4 two contracts with Plaintiff and engaging in an ongoing business relationship with
5 Plaintiff. The amounts involved are approximately \$600,000 and/or according to proof,
6 so Defendant actions were substantial and not minor and were purposeful in their intent
7 to direct and avail themselves of the benefit of entering into a contract in this district.

8 9. Defendant should have known by their failure to honor the contracts made
9 that it would be reasonable to be subject to suit here in this district, given that Plaintiff
10 has always been a resident of this district and it was clearly foreseeable that Defendant's
11 actions in breaching these contracts would directly lead to Plaintiff's harms in this
12 district.

13 JURISDICTION

14 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
15 1332(a)(1) because the matter in controversy exceeds the sum of \$75,000, exclusive of
16 interest and costs, and is between citizens of different states, because NOVAK and
17 NANOLOGIX as citizens from different states, namely, California and Ohio,
18 respectively. The two contracts entered into between Plaintiff and Defendant, which
19 Defendant breached have caused damages in excess of \$600,000 to Plaintiff, not
20 including costs, interest, or attorney's fees.

21 VENUE

22 11. Venue is proper in this District pursuant to 28 U.S.C. 1391(a)(2) because a
23 substantial part of the events or omissions giving rise to the claim occurred in this judicial
24 district. Defendant's actions of failing to remit funds to Plaintiff occurred in this judicial

1 district, and were a consequence of Defendant's purposeful direction and entering into
2 contracts (namely the RETAINER AGREEMENT) with Plaintiff in this jurisdiction. It
3 was Defendant's purposeful actions that generated and caused this action to arise in this
4 judicial district.

5 **INTRADISTRICT ASSIGNMENT**

6 12. This action arises in Santa Clara County, California, as Plaintiff, who has
7 suffered the injury and is the party that Defendant harmed is located in Santa Clara
8 County, California. Pursuant to U.S. District Court, Northern District of California, Civil
9 Local Rules 3-2, this action shall be assigned to the San Jose Division, because it arises in
10 Santa Clara County.

11 **FIRST CAUSE OF ACTION**
12 **BREACH OF CONTRACT, COUNT 1- Software Support Services**
13 **Agreement**

14 13. Plaintiff re-alleges, adopts, and incorporates by reference each and every
15 allegation contained above, as if the same were fully set forth herein.

16 14. Plaintiff and Defendant entered into a retainer agreement on or about
17 January 2008, the substantial terms of which were in exchange for payment in cash and
18 stock from Defendant to Plaintiff, Plaintiff would provide services to Defendant.

19 15. Defendant breached the agreement by failing to pay the invoiced amounts
20 due under the agreement, namely approximately \$600,000.

21 16. Plaintiff has performed all obligations to Defendant which were for
22 Plaintiff to provide its services, except those obligations Plaintiff was prevented or
23 excused from performing.
24

1 17. Plaintiff suffered damages legally (proximately) caused by Defendant's
2 breach of the agreement as follows: namely approximately \$600,000, with interest based
3 upon California Civil Code Sections 3287, and 3289.

4 18. If Plaintiff is the prevailing party, it requests costs pursuant to California
5 Code of Civil Procedure Section 1032.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff asks this Court to:

8 1. Award monies for all invoices owed under the Software Supports Services
9 Agreement, namely approximately \$600,000, plus interest, including prejudgment
10 interest, interest during this suit and postjudgment; AND

11 2. To award Plaintiff its costs and prejudgment interest on all damages; AND

12 3. To award Plaintiff its attorney's fees; AND

13 4. To award Plaintiff all punitive damages; AND

14 5. Other legal and equitable damages which will be further ascertained
15 through discovery and trial; AND

16 6. That Plaintiff be awarded such other and further relief as may be just and
17 appropriate.

18 **JURY DEMAND**

19 Plaintiff, Chris Novak, hereby demands a trial by jury of all issues so triable.

20 Dated: 04/30/2013

21 Respectfully submitted,

22 /s/
23 _____
24 Nick Heimlich, Attorney for Plaintiff
 Chris Novak